

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 41 of 1987

to

FIRST APPEAL No 50 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

RAMJIBHAI DUNGARBHAI DOBARIA

Appearance:

MR MD PANDYA for Petitioner
MR SURESH M SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 3, 5
MR RAJNI H MEHTA for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and

Date of decision: 08/09/2000

C.A.V. COMMON JUDGEMENT

(Per : D.C.Srivastava, J.)

1. The above Appeals arising out of common Judgment and Award rendered by Motor Accident Claims Tribunal, Rajkot on 24.3.1986, involving common questions of law and fact, are proposed to be disposed of by common judgment.

2. Brief facts giving rise to these Appeals are as under :

A vehicular accident took place on 5.2.1984 between 4.30 a.m. to 5.00 a.m. near Jasani T.B. Hospital at the out-skirts of the city of Rajkot in which ST Bus No. GRR 9074 and Ambassador Car No.GJO 7484 were involved. In this accident, out of nine occupants in the Ambassador Car four died and five sustained various injuries on their bodies. Ambassador Car was badly damaged and some damage was caused to the S.T. bus also. The marriage of deceased Babulal Ramjibhai was to be solemnised at Rajkot on 5.2.1984 at about 8.00 a.m. The marriage party therefore started from village Dhebar in the night of 4.2.1984 and 5.2.1984. Two vehicles were taking the marriage party to Rajkot. One vehicle was illfated Ambassador Car No.GJO 7484. Other members of the marriage party had another bus which was following the illfated Ambassador car. Deceased Bachubhai Morvadiya was driving the aforesaid Ambassador Car. It was alleged in the 10 claim petitions filed by the claimants that the driver of the Ambassador Car was driving it at a moderate speed on the correct side of the road. When it reached near Jasani T.B. Hospital between 4.30 a.m. to 5.00 a.m., S.T. Bus No.GRR 9074 driven by the driver, opponent No.1 before the Tribunal, came from opposite direction. It was being driven rashly and negligently by the driver. It was also driven at an excessive speed as a result of which the bus gave violent dash to the different parts of the Ambassador Car as a result of which the car was dragged along with S.T.Bus for a distance of about 50 ft. from the place of impact and collision. All the injured occupants of the Ambassador Car were shifted to Rajkot Government Hospital where four were pronounced dead and remaining five were found to have sustained grievous injuries. They were admitted in the Hospital.

3. In Claim Petitions No. 83 to 90 separate compensation amounting to Rs.2,50,000/-, Rs. 70,000/-, Rs. 1,60,000/-, Rs. 55,000/-, Rs.75,000/-, Rs.75,000/-, Rs.75,000/-, Rs.75,000/- and in Claim Petition No.104/84 compensation of Rs.1,50,000/- was claimed. In claim petition No.191/84 claim of Rs.60,000/- was made for damage caused to the Ambassador Car. S.T. Corporation also filed claim petition No.385 of 1984 claiming Rs.3000/- as compensation for damage caused to its bus.

4. The claim petitions were resisted by the driver opponent No.1 and S.T. Corporation opponent No.2 before the Tribunal denying all the allegations made in the claim petition numbering ten filed by the claimants against them. Their case had been that the S.T. Bus was being driven on the correct side of the road at a moderate speed, but the ambassador car which was being driven rashly and negligent had entered into incorrect side of the road and that the ambassador car had dashed with the S.T. Bus resulting in the accident. It was further alleged by them that the accident occurred due to rash and negligent driving on the part of the driver of the ambassador car. The last plea was that the claimants are not entitled to any compensation.

5. The opponent No.3 before the Tribunal and respondent No.4 in these Appeals was Insurer of the Ambassador Car. The stand of the Insurance Company was that the accident occurred due to rash and negligent driving of the S.T. Bus by its driver who was plying the same at an excessive speed and gave a violent dash to the ambassador car which was on the correct side of the road. It was further the stand of the Insurance Company that the occupants of the ambassador car or the legal representatives of the deceased occupants of the ambassador car, are not entitled to any compensation from the Insurance Company because the Ambassador Car was driven in violation of the terms of Insurance Policy. The occupants of the ambassador car were travelling in the car as paid passengers and as such the owner acted in breach of specific conditions of the Insurance policy. The occupants were not travelling in the car in pursuance of any contract of employment hence also the Insurance Company is not liable. It was further pleaded that nine persons were being carried in the ambassador car as against carrying capacity of five persons hence also the Insurance Company is not liable to pay any compensation. It was also pleaded that the driver of the car was not holding valid driving licence hence also the Insurance Company is not liable.

6. The owner of the Ambassador car also filed written statement pleading that the owner is not liable to pay compensation because there was no rashness and negligence on the part of the driver of the ambassador car. Alleging that the driver of the ST Bus was rash and negligent and the accident occurred due to his rashness and negligence and further because a criminal case was registered against the driver of the bus the owner is not liable to pay any compensation.

7. All the claim petitions were tried together by the Tribunal. Common issues were framed in Claim Petition Nos.83/84 to 90/84, 104/84 and 191/84. Seperate issues were framed in claim petition No.385 of 1984.

8. In claim petition Nos.83/84 to 90/84, 104/84 and 191/84 the Tribunal found that the accident took place due to rash and negligent driving on the part of the ST Bus driver and that the deceased driver of the Ambassador Car was not guilty of negligence either sole or contributory. It further found that the ST Corporation is vicariously liable for the tortious act of its driver opponent No.1. It further found that the Insurance Company is not liable to pay any compensation because there was no negligence on the part of the driver of the Ambassador Car. Likewise it found that the owner of the Ambassador Car is also not liable to pay any compensation.

9. In claim petition No. 385 of 1984 the Tribunal found that the ST Bus No.GRR 9074 was not damaged in the accident due to rash and negligent driving on the part of the deceased driver of the Ambassador Car and that the driver of the ST Bus was guilty of rash and negligent driving. With these findings this claim petition was dismissed.

10. Following compensation was awarded in various claim petitions by the Tribunal :

- i) M.A.C.Petition No. 83 of 1984 Rs.1,90,000/-
- ii) M.A.C.Petition No. 84 of 1984 Rs. 55,500/-
- iii) M.A.C.Petition No. 85 of 1984 Rs.1,37,920/-
- iv) M.A.C.Petition No. 86 of 1984 Rs. 28,500/-
- v) M.A.C.Petition No. 87 of 1984 Rs. 37,850/-
- vi) M.A.C.Petition No. 88 of 1984 Rs. 39,650/-
- vii) M.A.C.Petition No. 89 of 1984 Rs. 38,300/-
- viii) M.A.C.Petition No. 90 of 1984 Rs. 40,300/-
- ix) M.A.C.Petition No.104 of 1984 Rs. 68,000/-
- x) M.A.C.Petition No.191 of 1984 Rs. 20,000/-

It is therefore these Appeals by the Gujarat State Road Transport Corporation. No Appeal has been filed by the Corporation against the Judgment of the Tribunal in M.A.C.Petition No.385 of 1984 dismissing the said claim petition.

11. Learned Counsel for the parties were heard at length. The Award of the Tribunal has been carefully examined so also the lengthy arguments advanced by Ms. Desai on behalf of Shri M.D.Pandya were also taken into consideration.

12. Though in the written statement the stand of the ST Corporation was that the driver of the Ambassador Car was driving the vehicle rashly and negligently with excessive speed on incorrect side of the road that the accident took place hence the Corporation or the driver is not liable to pay any compensation, yet in the course of argument Ms.Desai contended that from the evidence on record it clearly transpires that it was a case of head-on collision in which the driver of the Ambassador car was guilty of contributory negligence, hence findings of the Tribunal that the driver of the ST Bus was solely responsible for the accident deserves to be set aside. As against this Shri R.H.Mehta, learned Counsel for the respondent No.4 - Insurance Company and Shri M.S.Shah, learned Counsel for the claimants contended that the plea of contributory negligence was not raised by the Appellant before the Tribunal hence this plea for the first time cannot be permitted to be raised in the course of argument in these First Appeals. I, however, do not find any force in this contention of the learned Counsel for the respondents. The reason is that a specific issue on contributory negligence of the driver of the Ambassador Car vide Issue No.3 was framed by the Tribunal in all the claim petitions filed by the claimants and the plea of contributory negligence was also raised under Issue No.2 of claim petition No.385 of 1984. Shri M.S.Shah, however, contended that in the absence of pleading on contributory negligence neither any issue could be framed nor any evidence could be permitted to be led by the Tribunal on such plea. I again do not find any substance in this contention. Para : 15 of the Judgment of the Tribunal shows that in written statement it was inter-alia the case of the ST Corporation appellant in the alternative that the car driver had contributed towards rash and negligent driving and he was blame worthy for the same. This is nothing but plea of contributory negligence which was taken in the alternative by the appellant and as such issue on the

point was rightly framed by the Tribunal and the Tribunal was justified in permitting the parties to adduce evidence on the point.

13. The date, time and place of accident is not in dispute. Likewise involvement of the two motor vehicles in the accident is also not in dispute. It is also not in dispute that the four occupants of the ambassador car died and were so declared dead on reaching the hospital at Rajkot. Five persons who were other occupants of the Ambassador Car sustained various injuries on their person.

14. On the point of rashness and negligence on the part of the two drivers of ST Bus and Ambassador Car the Tribunal has taken into consideration the oral evidence of the witnesses as well as the F.I.R. and the Panchnama and it came to the conclusion that the driver of the ST Bus was solely responsible for the accident inasmuch as he drove the bus in a rash and negligent manner and was driving the vehicle at an excessive speed. The stand of the claimants find support from the written statement of the owner of the car and also from the written statement of the Insurance Company - opponent No.3 before the Tribunal and respondent No.4 in these Appeals wherein also it has been stated that the driver of the ST Bus was rash and negligent and was driving the vehicle at an excessive speed.

15. Learned Counsel for the appellant has challenged the findings of the Tribunal by reading each and every line of the statement of the witnesses but we were not satisfied with the hair splitting tendency in the arguments. The case has to be examined on proper appreciation of evidence on record and not that on the strength of fault finding tendency while examining the evidence.

16. The Tribunal has rightly placed reliance upon the statement of Punabhai Jivrajbhai who was one of the occupants in the Ambassador Car and who has filed M.A.C. Petition No. 85 of 1984. He was a member of the marriage party. He had an occasion to see the accident. He is injured witness and there is no reason to doubt his presence on the date, time and place of the accident. He has stated in detail who were the persons sitting on the rear seat of the Car and also who were sitting on the front seat of the Car. The Driver was none-else than the real brother of the bride-groom who was going to be married and who died in the accident. He stated that the Car was running at a speed of 40 km. per hour and was

running on the correct side of the road. He gave detailed account of the accident. He stated that the ST Bus was being driven at an excessive speed and that the driver of the bus did not blow horn nor applied the brakes before the accident. He further stated that in all five persons were on the front seat and four persons were on the back seat of the Ambassador Car. Much was high-lighted by Ms. Desai on this statement of this witness that nine persons were sitting in the Ambassador car hence the driver could have great difficulty in controlling the Ambassador Car. However, it has come in evidence that the driver was also the member of the marriage party and brother of the bride-groom. It has also come in evidence that two children aged 5 and 7 years were sitting in the lap of the two persons occupying front seat of the Ambassador Car. In this way for all purpose though there were five persons on the front seat actually three persons were occupying the front seat of the Ambassador Car and two children were sitting in the lap of the two persons and four persons were conveniently accommodated on the back seat of the Ambassador Car and as such it cannot be said that the over-loading was the result of this accident or that the driver could not have controlled the steering wheel of the Ambassador Car. The witness had also deposed that the width of the tar road at the scene of accident was 22 ft. and there were 5 ft. kachcha shoulders on both the sides of the tar road. In this way the road including the kachcha shoulders at the place of accident was 32 ft. wide and on such a wide road three vehicles could easily pass. There is nothing on record to show that there was any obstruction from any other vehicle at that time at the place of accident due to which the driver of the Ambassador Car could not control his vehicle.

17. Ms.Desai further contended that it is in evidence that the ladies were singing song and were cutting jokes and the driver was also talking hence the driver could have easily lost control. This contention was based on mere surmises and conjectures. If the ladies were members of the marriage party they were bound to be in gay mood and if they were singing song it was nothing improper conduct on their part. Likewise if for a moment the driver was also talking it does not mean that at the time of accident he was rash, careless or negligent on the steering wheel.

18. It has further come in evidence that there was white strip dividing the tar road in two portions. The panchnama was also taken into consideration by the Tribunal and from the statement of Punabhai Jivabhai the

Tribunal has rightly come to the conclusion that the Ambassador was on the left side of the dividing white strip of the road and that the ST Bus was on the incorrect side and had entered towards its right in the wrong track as a result of which the accident took place. The Tribunal has rightly taken aid from the panchnama and also from the recitals made in the F.I.R. The Tribunal has also taken into consideration the statement of witnesses who gave statement before the Police and not before the Tribunal. In our view such statement could not be used by the Tribunal in evidence because those witnesses, namely, Rasiklal, Punabhai, Kantaben, Madhubhai, Laxmanbhai Mohanbhai Patel and S.R. Gohil were not examined before the Tribunal. The statement made during enquiry and investigation in criminal case before the Police could be used only for contradiction purposes. Unless those witnesses were examined in the witness box their unsigned statements before the Police could not be used by the Tribunal as substantive evidence in favour of the claimants. To this extent, in our view, the Tribunal fell in error in placing reliance upon the statements of witnesses which were recorded by the Police during investigation.

19. We have also taken into consideration broad features of the case. The Tribunal gave specific finding on issue No.2 in M.A.C.Petition No.385 of 1984 that the driver of the ST Bus was solely guilty of negligence and he was not guilty of contributory negligence. Likewise it recorded negative finding that the bus was not damaged in the accident due to any rash and negligent driving on the part of the deceased driver of the Ambassador Car. In face of these two findings the Corporation did not decide to prefer Appeal against the Award of the Tribunal in M.A.C. case. It therefore follows that the Corporation admitted in effect the findings of the Tribunal that the driver of the ST Bus was guilty of sole negligence and that the driver of the Ambassador Car was not guilty of contributory negligence. This is one circumstance which goes in favour of the claimants.

20. The second circumstance emerging from the evidence, oral as well as documentary, on record, is that the ST Bus was not on its correct side; rather it entered the wrong side and dashed with the Ambassador Car. Only slight damage was caused to the right front portion of the bus. The damages were claimed by the Corporation to the tune of Rs.3000/- which too was rejected by the Tribunal. As against this the Ambassador Car was badly smashed and four persons died and five persons sustained serious injuries. This itself shows that the impact of

the collision was so severe that it could not be caused due to rash and negligent driving of the Ambassador Car. Ms.Desai, however, contended that looking to the situation emerging from the panchnama it seems clear that after the accident the ST Bus was on its correct side and it was to the left side near the ditch and brake marks were also found which shows that the driver of the ST Bus was not driving the bus rashly and negligently. This contention stands ruled out from a very important factor in the case that after the accident the bus as well as the Ambassador Car were dragged to a distance of 50 ft. This is stated by the eye witness as well as it was also mentioned so in the panchnama. Actually the bus was not dragged in the reverse side; rather the Ambassador Car was dragged after impact of collision to a distance of 50 ft. It further shows that if the ambassador car was being driven at a rash and excessive speed with negligent manner there would have been no occasion for the ambassador car to have been dragged upto a distance of 50 feet towards back.

21. It is therefore obvious that the impact was so severe that the heavy vehicle, namely, the ST Bus dragged the car towards reverse side covering a distance of 50 ft. The contention of the learned Counsel for the appellant that the bus was standing near the ditch shows that it was being driven on the correct side also cannot be appreciated. If such a fatal and violent accident occurred on a high-way the bus could have been taken to the left side so as to clear the high-way to avoid traffic conjection. It is nobody's case that after the accident the ST Bus became unserviceable. It is also nobody's case that immediately after the accident police reached the spot and prepared panchnama. The possibility, therefore, is that in order to clear the high-way the bus might have been taken towards left side near the ditch so as to give clear way for the traffic on the high-way near the scene of accident.

22. The Tribunal has also considered the statement of Parvatiben, Kantaben, Jayaben, Kashiben and has rightly concluded that these witnesses did not throw any light as to how the accident took place.

23. The Tribunal has also considered the statement of the driver of the ST Bus, namely, Husein Mamad Shaikh. It may be mentioned that he is highly interested witness to save himself as well as the appellant from the liability to pay compensation. He being highly interested witness his statement has to be carefully examined. The Tribunal has taken this pre-caution in

assessing the evidenciary value of the Statement of the ST Bus driver. The Tribunal has rightly rejected the statement of the bus driver that he had applied the brake and slowed down the speed of the bus or that he took the bus towards left side near the ditch. If this would have been the position then naturally the car driver could not have dashed against the ST bus because the road was sufficiently wide and there was no obstruction on the road. There was no reason why the car driver could have thrown the life of nine occupants of a marriage party including the bride-groom in danger. Likewise if the brake was applied by the ST bus driver and the bus came to a halt near the ditch the ambassador car along with the bus could not have been dragged for a distance of 50 ft. towards back of the ambassador car. The F.I.R. Ex.35 was also considered in right perspective by the Tribunal where similar version of the first hand information of the accident was conveyed by Ramjibhai, complainant, to the police. Panchnama was also rightly considered in proper perspective by the Tribunal. We, therefore, do not find any reason to disagree with the findings of the Tribunal that the Ambassador car was running on the correct side of the road; that the tar road was divided by a dividing strip and the entire road was divided in two tracks; that the tar road had shoulders measuring 5 ft. wide on both sides; that the width of the road was sufficient to allow two vehicles to pass simultaneously, that the ST Bus had entered incorrect side of the road and that it was running at an excessive speed and violent dash was given from the front portion of the bus. The Tribunal was further justified in concluding that the dash was so forcible that the ambassador car was smashed and was pushed back for a distance of about 50 ft. and the ST Bus had halted near the ditch after dash with the ambassador car. This conclusion negated the contention of learned Counsel for the appellant that the bus was stationary near the ditch. On such findings the Tribunal was justified in concluding that there was no rashness and negligence on the part of the driver of the ambassador car and that the driver of the ST bus was rash and negligent in driving the vehicle on account of which the accident took place. The Tribunal was further justified in repelling the plea of the appellant that the driver of the ambassador car was guilty of contributory negligence. We, therefore, do not find any reason for interference in the aforesaid findings of the Tribunal which are based on proper appreciation of evidence on record.

24. Coming to the compensation awarded by the Tribunal learned Counsel for the appellant has challenged

the findings of the Tribunal. We have gone through the findings of the Tribunal in each and every M.A.C. Petitions. It is not a case where the Tribunal has blindly awarded compensation as claimed by the claimants. The relevant chart below indicates that the compensation was worked out after application of mind, by the Tribunal, to the evidence on record :

Sr.	M.A.C.	Case	FA	No.	Amount	Amount
No.	No.	Awarded	claimed			
		Rs.	Rs.			
01.	83/84	41/87	1,90,000/-	2,50,000/-		
02.	84/84	42/87	55,500/-	70,000/-		
03.	85/84	43/87	1,37,920/-	1,60,000/-		
04.	86/84	44/87	28,500/-	55,000/-		
05.	87/84	45/87	37,850/-	75,000/-		
06.	88/84	46/87	39,650/-	75,000/-		
07.	89/84	47/87	38,300/-	75,000/-		
08.	90/84	48/87	40,300/-	75,000/-		
09.	104/84	49/87	68,000/-	1,50,000/-		
10.	191/84	50/87	20,000/-	60,000/-		

25. We have examined the findings of the Tribunal on the compensation awarded to the claimants in the above claim petitions. We do not find that the Tribunal has committed any error in calculating the amount of compensation. Any argument advanced by the learned Counsel for the appellant assailing the findings of the Tribunal on quantum of compensation can not be accepted. We have considered the arguments of the learned Counsel for the appellant assailing the findings of the Tribunal on quantum of compensation and we do not find any merit thereunder. If the Car was damaged and compensation was claimed at Rs.60,000/-, but the Tribunal awarded Rs.20,000/- only, it cannot be said to be exorbitant. The compensation awarded to the ladies who received injuries and who filed medical evidence to substantiate the percentage of disability cannot be said to be arbitrary or unreasonable or unjust.

26. In view of the aforesaid discussions we do not find any merit in these appeals which are liable to be dismissed and are hereby dismissed with no order as to costs.

sd/-

Date : September 08, 2000 (D. C. Srivastava, J.)

sd/-

(H. K. Rathod, J.)

sas

